IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

IN RE THE PERSONAL RESTRAINT PETITION OF: JEFFREY COATS, Petitioner.	NO. 83544-6 STATE'S RESPONSE TO MOTION FOR DISCRETIONARY REVIEW

I. IDENTITY OF PARTY:

Respondent, State of Washington, as represented by the Pierce County Prosecuting Attorney's Office, requests the relief designated in Part II.

II. DECISION BELOW:

The State of Washington, respondent below, asks this Court to deny the motion for discretionary review of the Order Dismissing Petition filed by the Acting Chief Judge of Division Two on August 19, 2009. *See* Appendix A.

ORIGINAL

FILED AS ATTACHMENT TO EMAIL

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III. FACTS:

The facts are set forth in the State's response below with citations to supporting documents. Essentially, petitioner entered a plea agreement where the State dismissed threes charges -conspiracy to commit kidnapping in the first degree, kidnapping in the first degree and attempted murder in the first degree – in return for petitioner's entry of a guilty plea to conspiracy to commit murder (Count I), conspiracy to commit robbery (Count II) and robbery in the first degree (Count III). The Statement of Defendant on Plea of Guilty correctly stated that the maximum term on Counts I and III was "life" but incorrectly stated the maximum term on Count II was "twenty years" instead of the correct term of "ten years." When petitioner was sentenced, his judgment incorrectly listed the maximum term as being "life" on Count II. Petitioner was given standard range, concurrent sentences on all of his convictions and he did not file a direct appeal. Nearly fourteen years after being sentenced, petitioner asserts for the first time in an untimely collateral attack that his plea was not knowing, intelligent, and voluntary because he was misinformed of the maximum penalty on the conspiracy to commit robbery in the first degree.

The Court of Appeals dismissed his petition. Appendix A. Petitioner now seeks discretionary review in the Supreme Court of this decision. Petitioner also filed a "Supplement in support of motion for discretionary review" in which he raised a challenge to his convictions based on double jeopardy grounds; this challenge had not been presented to the Court of Appeals. The Supreme Court directed the State to respond to the motion and supplement.

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IV. GROUNDS FOR RELIEF AND ARGUMENT:

A. UNDER ***McKIEARNAN***, PETITIONER HAS FAILED TO SHOW THAT HE IS ENTITLED TO RELIEF; HIS CLAIM OF AN INVOLUNTARY PLEA SHOULD BE DISMISSED AS TIME-BARRED.

Recently the Washington Supreme Court addressed whether a technical misstatement of the maximum term of confinement in a judgment renders the judgment "facially invalid" such that the one year time bar of RCW 10.73.090 does not apply. ***In the Matter of the Personal Restraint of McKiearnan***, 165 Wn.2d 777, 203 P.3d 365 (2009). McKiearnan pleaded guilty to robbery in the first degree in 1987 and his judgment listed the maximum term for the crime as twenty years to life imprisonment when it should have listed the maximum term simply as "life." *Id.* at 780. McKiearnan did not appeal but twenty years after his plea, he filed a personal restraint petition alleging that his plea had been involuntary because he had been misinformed of the correct statutory maximum term. As for the one-year time bar of RCW 10.73.090, McKiearnan did not assert that his claim fell under any of the exceptions to the time bar listed in RCW 10.73.100; rather, he argued that the error in his judgment regarding the maximum term rendered his judgment "facially invalid" so the time bar did not apply. *Id.* at 781; see also RCW 10.73.090; ***In re Pers. Restraint of Hemenway***, 147 Wn.2d 529, 532, 55 P.3d 615 (2002). The Court of Appeals dismissed his petition finding the defect in the judgment to be "clerical error" rather than an error that rendered the judgment facially invalid. On review in the Supreme Court, McKiearnan again asserted that his judgment was invalid because the sentencing court had no "authority to set the maximum sentence at anything less than life imprisonment" and that he need do nothing more that point out this error in the judgment in order to avoid the one-year time bar. *Id.* at 782. This Court disagreed. *Id.* The court noted that

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"McKiearnan was convicted of a valid crime by a court of competent jurisdiction and was sentenced within the appropriate standard range," and to "be facially invalid, a judgment and sentence requires a more substantial defect than a technical misstatement that had no actual effect on the rights of the petitioner." *Id.* at 782-783. The court held that as McKiernan had failed to establish facial invalidity of his judgment, his personal restraint petition was time barred under RCW 10.73.090 and properly dismissed. *Id.* at 783.

There is no statutory exception to the time bar for a claim that a plea was involuntary. RCW 10.73.100. An assertion that a plea is involuntary does not establish that a judgment is invalid on its face. *See* ***In re Pers. Restraint of Hemenway***, 147 Wn.2d 529, 531, 55 P.3d 615 (2002) (holding that a defendant's collateral attack was time barred where he filed the petition more than one year past the one year time limit, and the defendant's only challenge was that his plea was not voluntary, knowing, and intelligent, because he was not informed of the term of mandatory community placement). Moreover, even when a petitioner shows a facial invalidity in his judgment, the courts have limited relief to correction of the invalidity in the judgment and not expand the permissible relief to claims that are time-barred.

Several decisions of this Court have noted that while a petitioner may be entitled to correction of a facial invalidity, such correction does not affect the finality of that portion of the judgment and sentence that was correct and valid when imposed. Notably, under ***In Re Personal Restraint of Stoudmire,*** 141Wn.2d 342, 5 P.3d 1240 (2000), a facial invalidity in the length of the sentence imposed did not provide an exception for examining a time barred claim regarding the voluntariness of the plea.

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In ***Stoudmire,*** the court was faced with an untimely personal restraint petition raising numerous claims. Stoudmire challenged his convictions under two cause numbers; in one of these cause numbers, he had pleaded guilty to two counts of indecent liberties, one count of statutory rape in the second degree, one count of rape of a child in the second degree, and one count of rape of a child in the third degree. ***Stoudmire***, 141 Wn.2d at 347. His petition raised numerous challenges to these convictions; some of the challenges pertained to all of the counts, e.g., ineffective assistance of counsel, incorrect offender score, and involuntary plea. Other challenges pertained only to certain counts. Stoudmire claimed that the two counts of indecent liberties were filed after the statute of limitations had expired; he claimed that there was no factual basis for the rape of a child in the third degree (a claim that goes to the knowing and voluntary nature of the guilty plea), and that the sentences on both child rape convictions exceeded the statutory maximum of the crime. *Id.* The court analyzed whether Stoudmire's untimely claims fell within any exception in RCW 10.73.090 or 10.73.100. The court ultimately dismissed claims which fell under exceptions found under RCW 10.73.100 because Stoudmire had submitted a mixed petition by including claims, such as those challenging the sufficiency of his guilty plea, for which there was no applicable exception. The court did examine claims that fell under the exceptions in RCW 10.93.090 pertaining to whether the court lacked jurisdiction or whether the judgment was facially invalid. The court noted:

> If petitioner can show that *his claims* meet the conditions set forth in RCW 10.73.090(1), they are not time-barred, and this court may consider them.

Stoudmire, 141 Wn.2d at 351 (emphasis added).

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Ultimately, the court found that two of Stoudmire's claims[1] fell within exceptions to RCW 10.73.090(1), and could be considered. First, the court found that the judgment was invalid on its face because it could be shown that the statute of limitations had expired before the State filed the two indecent liberties counts; it remanded for dismissal of those counts. *Id.* at 355. Secondly, the court found that the 198 month sentence on the rape of a child in the second degree, a Class B felony, and the 102 month sentence on the rape of a child in the third degree, a Class C felony, both were facially invalid because they each exceeded the statutory maximum terms of ten and five years, respectively. The remedy the court provided was remand for correction of the erroneous sentences. *Id.* at 356. Importantly, the Court did not find that the presence of a facial invalidity regarding the length of the sentence provided a mechanism for Stoudmire to raise his untimely claim of an involuntary plea. The Court did not allow Stoudmire to circumvent the time bar by bootstrapping a claim that did not fall within the exceptions of RCW 10.73.090 and .100, to a claim for which there was an exception.

Stoudmire is not the only case where a court, in deciding the merits of an untimely petition, has limited the remedy to correction of the facial invalidity. *See* e.g., ***In re PRP of Thompson***, 141 Wn.2d 712, 719, 725, 10 P.3d 380 (2000)(court finds the judgment was invalid on its face because it showed that Thompson pleaded guilty to an offense that occurred before the effective date of the statute creating the offense; the remedy was dismissal of charge without prejudice). The court in ***In re PRP of Goodwin***, 146 Wn.2d 861, 866-67, 877, 50 P.3d 618 (2002), found that defendant's untimely claim that his offender score included "washed out" juvenile offenses was not barred as his judgment

[1] These claims affected a total of four of the five counts in the cause number.

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was facially invalid for including these offenses as criminal history. The court remanded for resentencing without the washed out convictions; ***State v. Calhoun***, 134 Wn. App. 84, 90 n.5, 138 P.3d 659 (2006) ("Calhoun also asserts that these invalidities and errors constitute facial invalidities that overcome the one-year time bar and allow him to challenge the voluntariness of his plea. However, as noted, these errors do not pertain to the voluntariness of Calhoun's plea. And Calhoun has cited no authority to support this contention that the invalidities and errors should further serve as a basis to allow him to withdraw his plea . . .").

In ***In re PRP of West***, 154 Wn.2d 204, 110 P.3d 1122 (2005), the sentencing judge made a handwritten notation on West's judgment and sentence explaining that West stipulated to ten years flat time with no earned early release. The Supreme Court determined that as the trial court had no authority to control early release, the court's notation on the judgment and sentence thus rendered the judgment facially invalid. ***West***, 154 Wn.2d at 206. In determining what remedy was appropriate, this Court explained:

> This court has been clear that the imposition of an unauthorized sentence does not require vacation of the entire judgment or granting of a new trial. The error is grounds for reversing only the erroneous portion of the sentence imposed.

West, 154 Wn.2d at 215 (citing ***State v. Eilts***, 94 Wn.2d 489, 496, 617 P.2d 993 (1980)); *see also*, ***Goodwin***, 146 Wn.2d at 877 ("Correcting an erroneous sentence in excess of statutory authority does not affect the finality of that portion of the judgment and sentence that was correct and valid when imposed."). The court in ***West*** thus remanded to trial court for correction of the invalid judgment and sentence in the form of deletion of the handwritten notation. ***West***, 154 Wn.2d at 215.

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Recently, the Washington Supreme Court reiterated, "[w]hen a judgment and sentence is facially invalid, the proper remedy is remand for correction of the error." ***In re Tobin***, 165 Wn.2d 172, 176, 196 P.3d 670, 672 (2008).

These decisions illustrate that a defendant may not obtain relief on a time barred claimed, such as the involuntariness of his plea, by trying to bootstrap it to a claim that involving facially invalidity. To allow this would be to allow a defendant to accomplish indirectly what the law does not allow him to do directly. A petitioner who demonstrates that a judgment contains a facial invalidity may obtain a correction of that invalidity, but that does not provide him with a means of obtaining relief on a time barred claim.

In the case now before the court, the State submits that under ***Stoudmire*** and ***Hemenway***, petitioner is entitled to a correction of his judgment so that it properly indicates the statutory maximum for the crime of conspiracy to commit robbery, Count II, is ten years as that corrects the facial invalidity, but no other relief.

The only exception to this line of cases that have limited the relief to correction of the facial invalidity is the recent case of ***In re PRP of Bradley***, 165 Wn.2d 934, 205 P.3d 123. In this case the Supreme Court allowed Bradley to withdraw his plea to two drug offenses after he showed that he had be misinformed as to the standard range on the lesser of the two charges due to the inclusion of "washed out" juvenile offenses in his offender score. Bradley had not appealed his judgment and he sought collateral relief in a petition that was filed almost five years after his judgment became final. The Court in ***Bradley*** did not address the limitations of RCW 10.73.090 except for this comment: "The State also appears to concede that the miscalculation resulted in a facial invalidity on Bradley's judgment and sentence, allowing him to avoid the one-year time bar to filing a personal

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restraint petition." ***Bradley***, 165 Wn.2d at 938-39. By failing to fully analyze the issue of the relevant time bars, the ***Bradley*** court apparently failed to note that its resolution of Bradley's petition is wholly inconsistent with how it resolved similar issues in ***Stoudmire***, *supra,* and with other cases, such as ***Hemenway***, which held there is no exception to the time bar for a claim that a plea is involuntary. The ***Bradley*** court then goes on to address the issues before it by applying case law from cases decided on direct appeal and one case[2] that involved a *timely* filed personal restraint petition where a trial court imposed a burdensome sentencing condition of which the petitioner had not been informed at the time of his plea. *See* ***Bradley***, 165 Wn.2d at 939-41. In failing to hold Bradley to any higher burden of showing error or prejudice than would be required of a defendant on direct appeal, the court seemingly abandoned decades of case law noting the distinctions between a direct appeal and a collateral attack and placing a higher burden on a petitioner seeking collateral relief. *See e.g.*, ***In re Mercer***, 108 Wn.2d 714, 718-721, 741 P.2d 559 (1987) (rule that constitutional errors must be shown to be harmless beyond a reasonable doubt has no application in the context of personal restraint petitions as petitioner must show actual and substantial prejudice); ***In re Hagler***, 97 Wn.2d 818, 823-25, 650 P.2d 1103 (1982) (stating that fundamental to the nature of habeas corpus relief is the principle that the writ will not serve as a substitute for appeal and holding that a personal restraint petition, like a petition for a writ of habeas corpus, is not a substitute for an appeal). The ***Bradley*** decision appears to lead to dangerous ground –conflating the burdens imposed on

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[2] In ***In re PRP of Isadore***, 151 Wn.2d 294, 88 P.3d 390 (2004), the defendant entered a guilty plea, but was not advised regarding a term of mandatory community placement, as the prosecutor and defense counsel were unaware of the required condition. After sentencing, the Department of Corrections notified the prosecutor of the error. After the time for appeal had expired, the court granted a prosecutor's motion to amend the judgment to include the term of community placement. In response, Isadore promptly filed a personal restraint petition seeking specific performance of his plea agreement, which the court granted.

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a criminal defendant on direct appeal and a petitioner on collateral attack so that there is no distinction.

The Washington Supreme Court has noted that collateral relief must be limited in state as well as federal courts because of its deleterious effect on the finality of judgments. *Id.* The petitioner here, having not challenged the voluntariness of his plea on direct appeal, could not obtain relief in the federal courts unless he could show that he was actually innocent of his crime. The United States Supreme Court held:

> We have strictly limited the circumstances under which a guilty plea may be attacked on collateral review. "It is well settled that a voluntary and intelligent plea of guilty made by an accused person, who has been advised by competent counsel, may not be collaterally attacked." ***Mabry v. Johnson***, 467 U.S. 504, 508, 104 S.Ct. 2543, 2546-2547, 81 L.Ed.2d 437 (1984) (footnote omitted). And even the voluntariness and intelligence of a guilty plea can be attacked on collateral review only if first challenged on direct review. Habeas review is an extraordinary remedy and "'will not be allowed to do service for an appeal.'" ***Reed v. Farley***, 512 U.S. 339, 354, 114 S.Ct. 2291, 2300, 129 L.Ed.2d 277 (1994) (quoting ***Sunal v. Large***, 332 U.S. 174, 178, 67 S.Ct. 1588, 1590-1591, 91 L.Ed. 1982 (1947)). Indeed, "the concern with finality served by the limitation on collateral attack has special force with respect to convictions based on guilty pleas." ***United States v. Timmreck***, 441 U.S. 780, 784, 99 S.Ct. 2085, 2087, 60 L.Ed.2d 634 (1979).

Bousley v. United States. 523 U.S. 614, 621, 118 S. Ct. 1604, 1610 (1998) (refusing to review a claim that a plea was involuntary on habeas review when the petitioner had not challenged the voluntariness of his plea on direct appeal and noting the only way to avoid this procedural default was for petitioner to make a showing that he was actually innocent of the crime to which he pleaded guilty.). The Washington Supreme Court has recognized the importance of finality of decisions in the past: "Collateral relief undermines the principles of finality of litigation, degrades the prominence of the trial, and sometimes costs society the right to punish admitted offenders." ***Hagler***, 97 Wn.2d at 923 (citing

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Engle v. Issac, 456 U.S. 107, 102 S. Ct. 1558, 71 L. Ed. 2d 783 (1982)). The decisions in ***Stoudmire, Hemenway,*** and ***Isadore***, protect the finality of judgments by effectively limiting the ability of a defendant to collaterally attack the voluntariness of his guilty plea to a timely filed collateral attack under RCW 10.73.090. If this challenge is not raised in a timely filed collateral attack, the defendant will be precluded from raising this claim, but may still seek correction of any facial invalidities in his judgment. This is more extensive relief than what a similarly situated petitioner could do in federal court, yet it still offers some protection to the finality of judgment. In contrast, the decision in ***Bradley*** offers no protection to the finality of judgment and seemly disregards, without discussion, years of treating collateral attacks differently than a direct appeal.

In the case now before the court, Petitioner Coats makes essentially the same argument as in ***McKiearnan*** with regard to the facial invalidity of his judgment due to an incorrect listing of the statutory maximum. In his petition, petitioner argued that he need not demonstrate any prejudice once he has shown an error in being informed about a direct consequence of a guilty plea. Petition at pp.6-8. The Supreme Court rejected this argument ***McKiearnan***, and that decision controls here. Under McKiearnan, "*a more substantial defect than a technical misstatement that had no actual effect on the rights of the petitioner*" is required before the court will find that a judgment is facially invalid. *See* 165 Wn.2d at 783(emphasis added). Petitioner pleaded guilty to three crimes –two carried maximum term of life and the third, conspiracy to commit robbery, carried a maximum term of ten years. While petitioner was incorrectly informed that the maximum term on his conspiracy to commit robbery offense was twenty years, he was correctly informed of his standard range and that his sentence on this offense would run concurrently with his other two convictions. Petitioner was informed that he faced the possibility that he could be sentenced to ten years in prison for the conspiracy to commit robbery; he was also

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misinformed that he might possibly spend longer in prison than ten years on that offense. Similar to ***McKiearnan***, petitioner was informed of a statutory maximum that included the proper term but which also included some misinformation. Petitioner received a proper standard range sentence of 51 months on this offense, the court did not impose an exceptional sentence beyond what the legislature authorized or contrary to the advisement he was given regarding the maximum term. This sentence was run concurrently on his 240 month sentence for conspiracy to commit murder, which carried a maximum term of life. Thus petitioner knew that by entering his plea to three crimes, he was subjecting himself to a maximum term of life in prison on two of the offenses, but that he would likely receive a sentence within the appropriate standard range on each count and a total term of confinement on all three offenses which would be far below a life sentence. As expected, the court imposed standard range sentences. Under ***McKiearnan***, petitioner needed to show "*a more substantial defect than a technical misstatement that had no actual effect*" on his rights. He failed to meet this burden.

The decision in ***McKiearnan*** is completely consistent with an earlier decision of the Supreme Court. In ***In re Bass v. Smith***, 26 Wn.2d 872, 176 P.2d 355 (1947), the Court addressed a similar situation as petitioner's. Mr. Bass sought relief by habeas corpus contending that his judgment was void because it listed the statutory maximum for his conviction on rape as being "not more that fifteen years" when under the relevant law it should have been set at "not less than twenty years." ***Bass*** at 874-875. The Supreme Court agreed that the judgment was erroneous but went on to hold that not every "erroneous judgment" is the equivalent of a "void judgment." It found that the judgment was not void because the trial court had had subject matter jurisdiction as well as personal jurisdiction over Mr. Bass, who had been present at the time of sentencing. *Id.* at 877.

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> While the judgment was deficient, it was not absolutely unauthorized, or of an entirely different character from that authorized by law. The judgment was erroneous, in that it did not impose a sentence of not less than twenty years, as provided by Rem. Rev. Stat. (Sup.), § 10249-2, but it was not absolutely void.

Id. The Court concluded that as only void judgments could be collaterally attacked by way of habeas corpus, Mr. Bass was not entitled to relief. *Id.* at 876-877.

Under both ***McKiearnan*** and ***Bass***, the type of error in petitioner's judgment does not render his judgment "void." The decision below is in accord with ***Stoudmire***, ***Hemenway***, and ***McKiearnan***, and there is no reason for this court to take review. Petitioner failed to meet his burden of showing an exception to the one year time bar on his claim that his plea was involuntary and the Court of Appeals properly dismissed the petition as untimely.

B. THIS COURT SHOULD SUMMARILY REFUSE TO CONSIDER A PETITIONER'S DOUBLE JEOPARDY CLAIM WHICH WAS RAISED FOR THE FIRST TIME IN A SUPPLEMENT TO THE MOTION FOR DISCRETIONARY REVIEW.

The Supreme Court will not consider an issue that was not raised or briefed in the Court of Appeals. ***In re Lord***, 152 Wn.2d 182, 188 n.5, 94 P.3d 952 (2004), citing ***State v. Halstien***, 122 Wn.2d 109, 130, 857 P.2d 270 (1993). This rule is consistent with the fact that, in general, a party seeking discretionary review in the Supreme Court of an order dismissing a petition must show that there is some error in or conflict created by the decision of the Court of Appeals. See RAP 13.4(b) and 13.5(a). If a claim has not been presented to the Court of Appeals, then its decision will not address it. No conflict or error can be created by a decision that is silent on a particular claim. *See also* ***Plein v. Lackey***, 149 Wn.2d 214, 222, 67 P.3d 1061, 1064 (2003) ("the general rule is that parties may not raise a new issue for the first time in a petition for review").

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In the case now before the court, petitioner filed a personal restraint petition in the Court of Appeals alleging that his plea was involuntary. The Court of Appeals issued an order addressing this claim and dismissing the petition. Petitioner did not raise a claim regarding double jeopardy until a "Supplement in Support of Motion for Discretionary Review" filed with this Court. The claim raised in the supplement is not properly before this Court as it was not presented to the Court of Appeals. This Court should deny review of the double jeopardy claim as being improperly presented.

V. CONCLUSION:

For the foregoing reasons the State asks the Court to deny the motion for discretionary review.

DATED: January 4, 2010.

MARK LINDQUIST
Pierce County
Prosecuting Attorney

KATHLEEN PROCTOR
Deputy Prosecuting Attorney
WSB # 14811

Certificate of Service:
The undersigned certifies that on this day she delivered by U.S. mail and/or ABC-LMI delivery to the attorney of record for the appellant ~~and~~ appellant c/o his or her attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

1/4/10 [signature]
Date Signature

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APPENDIX "A"

Order Dismissing Petition

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint Petition of JEFFREY A. COATS, Petitioner.	No. 38894-4-II ORDER DISMISSING PETITION AND DENYING MOTION FOR RELEASE FROM CUSTODY

Jeffrey A. Coats seeks relief from personal restraint imposed following his 1995 guilty plea convictions for conspiracy to commit first degree murder, conspiracy to commit first degree robbery, and first degree robbery. He argues that his judgment and sentence is facially invalid and exceeds the sentencing court's jurisdiction because it contains the incorrect maximum sentencing term for conspiracy to commit robbery. He further argues that his guilty plea is invalid because he was misadvised about the maximum penalty for conspiracy to commit robbery and his possible term of community placement. Coats also moves for release from custody. We dismiss this petition as untimely and deny his motion.

When Coats filed the present petition in 2009, more than one year had elapsed after his judgment and sentence was final, in 1995. *See* RCW 10.73.090, .100. Thus, we cannot review petitioner's claims unless he shows that either (1) the time bar does not apply because his judgment and sentence is facially invalid or it was not rendered by a

court of competent jurisdiction or (2) one or more of the six exceptions to the time bar enumerated in RCW 10.73.100 applies.

Regarding the time bar, Coats first argues that his judgment and sentence is facially invalid because it incorrectly states that the maximum sentence for conspiracy to commit first degree robbery is life, when it is actually ten years. A judgment and sentence is facially invalid if it evidences the invalidity without further elaboration. *See In re Pers. Restraint of Goodwin*, 146 Wn.2d 861, 866 (2002). *In re Pers. Restraint of McKiearnan*, 165 Wn.2d 777, 783 (2009), controls our decision here. In that case, the judgment and sentence listed an erroneous maximum penalty for a conviction and the petitioner claimed that the error rendered his judgment and sentence facially invalid. Our Supreme Court, however, noted that the petitioner received a valid standard range sentence and held that "[t]o be facially invalid, a judgment and sentence requires a more substantial defect than a technical misstatement that had no actual effect on the rights of the petitioner." *In re McKiearnan*, 165 Wn.2d at 783. Thus, the Court held that this technical misstatement did not render the judgment and sentence facially invalid and the petitioner's claim of an invalid guilty plea was time barred. Here, the judgment and sentence lists the incorrect maximum sentence, but Coats received a valid, standard range sentence. Under *In re McKiearnan*, Coats has not demonstrated that his judgment and sentence is facially invalid.

Coats also argues that his petition is timely because the maximum penalty listed on the judgment exceeds the sentencing court's jurisdiction. A sentence is not jurisdictionally defective for purposes of the time bar exception merely because it contains an alleged mistake, violates a statute, or is based on misinterpretation of a

statute. *In re Pers. Restraint of Richey,* 162 Wn.2d 865, 872 (2008). As Coats does not claim lack of personal or subject matter jurisdiction, this exception to the time bar does not apply. *See In re Pers. Restraint of Vehlewald*, 92 Wn. App. 197, 200-01 (1998).

These arguments fail and Coats does not present any other argument regarding the time bar. Thus, we must dismiss this petition as untimely.

Accordingly, it is hereby

ORDERED that this petition is dismissed under RAP 16.11(b) and the motion for release from custody is denied.

DATED this 19th day of August, 2009.

Acting Chief Judge

cc: Jeffrey A. Coats
Pierce County Clerk
County Cause No(s). 94-1-04848-1
Gerald A. Horne, Pierce County Prosecuting Attorney
Kathleen Proctor
Jeff Ellis

OFFICE RECEPTIONIST, CLERK

To: Heather Johnson
Subject: RE: In re the PRP of: Jeffrey Coats--83544-6

Rec. 1-4-10

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Subject: In re the PRP of: Jeffrey Coats--83544-6

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Attached is the State's Response to Motion for Discretionary Review